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No. 09-1325

Supreme Court, U.S.
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In The
Supreme Court of the United States

DAVID H. MILLS,

Petitioner,

v.

MIDWEST TITLE LOANS, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF OF THE COMMONWEALTH OF VIRGINIA AND ARIZONA, CONNECTICUT, IDAHO, IOWA, KENTUCKY, MARYLAND, MICHIGAN, MISSISSIPPI, MONTANA, NEW MEXICO, NORTH DAKOTA, OHIO, OKLAHOMA, TENNESSEE AND UTAH AS *AMICI CURIAE* IN SUPPORT OF GRANTING THE PETITION

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QUESTION PRESENTED

Does the Commerce Clause permit a State to regulate consumer loans to its residents by a firm that advertises and conducts multiple loan-related activities in the State, but that requires all loan agreements to be signed in another State?

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INTEREST OF *AMICI*[1]

The question presented in the Petition is one of considerable importance to the *amici* States. First, the States have extensively regulated the subprime consumer lending industry to protect their citizens and residents from abusive practices. Many of these statutes contain provisions with extraterritorial effect. The holding below imperils these statutes and, at the very least, invites costly litigation. Second, in order to craft appropriate legislation, the States need clarity with respect to the limits dormant Commerce Clause doctrine imposes on statutes and regulations with extraterritorial effects. At present, those limits are blurred.

SUMMARY OF THE ARGUMENT

The Petition should be granted for two reasons. First, the States need to know the extraterritoriality limits the dormant Commerce Clause doctrine imposes on them. The States have enacted an evolving body of laws to protect their citizens against unconscionable lending practices. Many of these laws expressly seek to protect their residents from loans signed in a different State.

[1] The parties were notified ten days prior to the due date of this brief of the intention to file.

Although some guidance can be extracted from this Court's modern cases, that guidance is quite limited. Plainly, price-affirmation statutes are unacceptable. Beyond this, the reach of the extraterritoriality limit imposed by the dormant Commerce Clause is uncertain. Academic commentary also has highlighted the need for greater clarity in this area. Adding to the confusion is the fact that the lower courts are divided with respect to the limits the Commerce Clause imposes on the extraterritorial impact of a State's statutes. The approach employed by the Third and Tenth Circuits cannot be reconciled with the approach the Seventh Circuit used below.

Second, the *per se* rule of invalidity applied by the Seventh Circuit improperly prevents States from regulating transactions that are based in significant part on actions that take place within their boundaries. The core purpose animating dormant Commerce Clause doctrine is to prevent Balkanization and favoritism that is destructive of interstate commerce. The Indiana statute[2] plainly did not seek to favor local economic interests and has little impact on interstate commerce. The test here should be *Pike*

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[2] Ind. Code § 24-4.5-1-201(1)(d) (providing that a loan is deemed to occur in Indiana if a resident of the State "enters into a consumer sale, lease or loan transaction with a creditor . . . in another state and the creditor . . . has advertised or solicited sales, leases, or loans in Indiana by any means, including by mail, brochure, telephone, print, radio, television, the Internet or electronic means.")

balancing, rather than *per se* invalidity. And the statute at issue here readily survives *Pike* scrutiny.

ARGUMENT

I. STATE LEGISLATURES NEED GUIDANCE ON THE PERMISSIBLE EXTRATERRITORIAL REACH OF STATE LEGISLATION.

A. State legislation, particularly legislation regulating subprime loans, often has some extraterritorial effect.

"Subprime" consumer credit, including payday and car title lending, is a large industry with a significant impact on the States. In 2007, the Community Financial Services Association of America estimated that approximately 22,000 payday lenders extend around $40 billion in loans per year.[3] The Association estimates that over 15,000 title lenders operate in the United States.[4] Due to the punitive terms of many of these loans, borrowers often find themselves in a vicious cycle that simply makes matters worse.

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[3] Community Fin. Serv. Assn. of Am. (CFSA), About Payday Advance, http://www.cfsa.net/aboutpaydayadvance.html. (Accessed May 20, 2010).

[4] Bankrate.com, Car Title Lending: Short-Term Fix with Long-Term Expense, http://www.careprogram.us/pdfs/predatory/CarTitlePredatoryLending.pdf (Accessed May 20, 2010).

A large number of States have responded by enacting statutes to protect residents from unconscionable loan terms.[5] Many of these statutes apply to transactions whenever the lender reaches into the State from another State to solicit business. For example, Kan. Stat. Ann. § 16a-1-201(1)(b) deems that a transaction occurs in Kansas if "the creditor induces the consumer who is a resident of this state to enter into the transaction by solicitation in this state by any means, including but not limited to: Mail, telephone, radio, television or any other electronic means."[6] Other States regulate loans when

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[5] *See* Lynn Drysdale & Kathleen E. Keest, *The Two-Tiered Consumer Financial Services Marketplace: the Fringe Banking System and its Challenge to Current Thinking About the Role of Usury Laws in Today's Society*, 51 S.C. L. Rev. 589, 599 (2000) (noting a typical interest rate in the 200% to 300% range).

[6] *See also* Me. Rev. Stat. Ann. tit. 9-A, § 1-201(B) (credit transaction is deemed to occur in Maine if "[t]he creditor, wherever located, induces the consumer who is a resident of [Maine] to enter into the transaction . . . by face-to-face, mail, telephone or electronic mail solicitation in this State"); Okla. Stat. Ann. tit. 14A §§ 1-201(5) & 1-201A (requiring an Oklahoma license for any lender who issues a loan from another State to an Oklahoman, and precluding such lender from "collect[ing] charges through actions or other proceedings in excess of those permitted by" Oklahoma law or "enforc[ing] rights against the . . . debtor, with respect to the provisions of agreements which violate" Oklahoma law); 69 Pa. Cons. Stat. Ann. § 1103 (statute applies if "[a]ny solicitation or communication to sell, verbal or written, originating outside the Commonwealth of Pennsylvania but forwarded to and received in Pennsylvania by a resident buyer of Pennsylvania"); Wyo. Stat. Ann. § 40-14-120(a)(ii) (applying Wyoming consumer protections where "[t]he creditor induces consumers who are residents of this state to enter into credit

(Continued on following page)

payments are made from that State. *See* W. Va. Code § 46A-1-104 (applying West Virginia law if a West Virginia resident is induced to enter into a consumer loan "by personal or mail solicitation, and the goods, services or proceeds are delivered to the consumer in this state, and payment on such account is to be made from this state.").[7]

Some States are silent with respect to the extraterritorial reach of their regulations of subprime loans, but do not by their terms exclude application of the statute to a resident who signed a contract in another State. *See* 2010 Oregon Laws 1st Sp. Sess. Ch. 23 (S.B. 993) (applying to payday or title loans made to Oregon residents "if the consumer makes a payment on the payday loan or title loan from [Oregon].").[8] Finally, still other States simply preclude

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transactions by a continuous and systematic solicitation either personally or by mail and the goods or money are delivered in this state and payment is made from this state"). *See also* D.C. Code § 28-3301(h) (regulating consumer credit transactions involving a D.C. resident if the lender "has solicited or advertised in the District of Columbia by any means, including mail, brochure, telephone, print, radio, television, internet, or any other electronic means").

[7] *See also* Vt. Stat. Ann. tit. 8 § 2238 (applying if the commercial loan is made "for use" in Vermont); Minn. Stat. Ann. § 47.601, sub. 3 (applying Minnesota law to out-of-state lenders that "make[ ] a consumer small loan electronically via the Internet").

[8] *See also* Va. Code Ann. §§ 6.1-445 (requiring a license if any payday loans are made to any person residing in Virginia, "whether or not the [lender] has a location in the Commonwealth") and 6.1-469.1 (same).

enforcement of loans that exceed a certain interest rate. *See* Ohio Rev. Code Ann. § 1321.17 (precluding enforcement of loan contracts that exceed Ohio's allowable rate of interest, including those made by lenders from other States who primarily make loans by mail).[9] Given the creativity of the subprime lending industry and the desire of States to protect consumers, the trend of regulating subprime loans is unlikely to recede for the foreseeable future.[10]

Nor is the trend of States regulating loans executed in other States likely to go away. Extensive cross-border lending is inescapable. Nearly all States contain extensive border areas with other States, and many cities straddle state borders. For example, in *Kaneff v. Delaware Title Loans, Inc.*, 587 F.3d 616 (3rd Cir. 2009), a Pennsylvania resident signed a car title loan in Delaware. *Id.* at 618. The borrower sought relief from several clauses in the contract in a state court action filed in Pennsylvania. *Id.* at 619. In Virginia, the metropolitan Washington, D.C. area contains an agglomeration of municipalities from the District, Northern Virginia and Maryland. On the other side of the Commonwealth, the City of Bristol is

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[9] *See also* N.C. Gen. Stat. § 53-190(a) (applying restrictions on loans if solicitation occurred outside of the State).

[10] Subprime lenders have proved quite adept at circumventing regulatory controls. After Virginia regulated payday lenders, subprime lenders simply moved into title lending—in turn prompting legislation to govern those loans. *See* 2010 Va. Acts. ch. 477 (imposing new restrictions on car title loans).

located in part in Virginia and in part in Tennessee. A citizen can cross the state border simply by walking across the street. Any comprehensive State effort to protect its citizens against abusive lending practices will have to deal with "extraterritorial" lending.

B. Despite the importance of the issue, the limits on a State's extraterritorial reach are unclear.

1. A trio of cases from this Court addresses the extraterritoriality and the dormant Commerce Clause, but these decisions provide little guidance beyond the facts of those cases. In *Edgar v. MITE Corp.*, 457 U.S. 624 (1982), "the fount of the modern extraterritoriality decisions,"[11] this Court reviewed the propriety under the dormant Commerce Clause of an Illinois anti-takeover statute. The statute governed transactions "not only with . . . stockholders living in Illinois, but also those living in other States and having no connection with Illinois." *Id.* at 642. The statute could even "regulate a tender offer which would not affect a single Illinois shareholder." *Id.* at 642. A plurality of the Court, finding that "the Illinois statute . . . has a sweeping extraterritorial effect," *id.*, suggested that States may not regulate a transaction unless that transaction occurs entirely within the boundaries of the State and that regulation having

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[11] Jack L. Goldsmith & Alan O. Sykes, *The Internet and the Dormant Commerce Clause*, 110 Yale L.J. 785, 805 (2001).

"direct" extraterritorial effects should be declared *per se* invalid. *Id.* at 641-43. That part of the opinion did not, however, garner a majority of the Court. The only portion of Justice White's opinion that was joined by a majority of Justices was the portion applying the *Pike* balancing test, and concluding that the Illinois statute did not pass this test. *Id.* at 625.

In *Brown-Forman Distillers Corp. v. New York State Liquor Auth.*, 476 U.S. 573 (1986) and *Healy v. The Beer Institute*, 491 U.S. 324 (1989), the Court again invoked the extraterritoriality principle, this time to strike down price-affirmation statutes. *Brown-Forman*, 476 U.S. at 581-82; *Healy*, 491 U.S. at 337-39. The fundamental problem with price-affirmation statutes was this: once a distiller filed a price schedule with the New York Liquor Authority on, for example, May 25, say, for the month of July, it effectively became the law of New York that the distiller could not sell at a lower price for that month to a wholesaler in Texas. Any sale by the distiller at a lower price in Texas in July would be subject to sanction by the New York Liquor Authority. New York effectively had forced an out-of-state merchant "to seek regulatory approval in one State before undertaking a transaction in another." *Brown-Forman*, 476 U.S. at 582. In addition to extraterritorial reach, these statutes presented the additional risk of "price gridlock" as more and more States imposed price-affirmation laws. *Healy*, 491 U.S. at 340.

Edgar, *Healy*, and *Brown-Forman* provide very limited guidance to state legislatures. The Court held that a State exceeds the permissible bounds of the dormant Commerce Clause when it "directly controls commerce occurring *wholly* outside the boundaries of the State." *Healy*, 491 U.S. at 336 (emphasis added). When a Texas distiller sells in Texas to a Texas consumer, the transaction takes place "wholly" outside New York. If a New York law reaches out to dictate the terms of that transaction, the State has exceeded the bounds of what it may permissibly regulate. That is not the case with respect to the States' subprime lending statutes, which regulate transactions involving their respective residents. Here, for example, the agreement was reached in Illinois but the Indiana resident would perform his end of the bargain from Indiana. This Court's dormant Commerce Clause decisions leave unresolved what constitutes a transaction that occurs "wholly" outside a State's boundaries.

The Court has stated that a State cannot "directly control" regulation of commerce that occurs "wholly" outside of a State's boundaries. *Id.* It is similarly not clear what constitutes "direct" regulation versus "indirect" regulation. All told, while *Edgar*, *Brown-Forman* and *Healy* provide some limited guidance to State legislatures, they leave wide gaps in an increasingly important area of the law.

2. Recent scholarship underscores the need for this Court to provide guidance. Professor Florey notes that constitutional limits on the extraterritorial

application of State law have been "murky and contradictory," yielding "no clear answer" as to when the Commerce Clause or the Due Process Clause limit a State's police power. Katherine Florey, *State Courts, State Territory, State Power: Reflections on the Extraterritoriality Principle In Choice of Law and Legislation*, 84 Notre Dame L. Rev. 1057, 1061 (2009). *See also* Mark D. Rosen, *State Extraterritorial Powers Reconsidered*, 85 Notre Dame L. Rev. 1133, 1154 (2010) ("[C]onstitutional doctrine to this day does not clearly tell us to what extent states may regulate people and things outside their borders."); Jack L. Goldsmith, Alan O. Sykes, *The Internet and the Dormant Commerce Clause*, 110 Yale L.J. at 784 (noting that "[t]he scope of the extraterritoriality principle is unclear. . . .").

3. Adding to this confusion is the conflicting approaches of the circuits. Under the jurisprudence of the Third or Tenth Circuits, the Indiana statute at issue would have been upheld as a proper exercise of the State's power under the dormant Commerce Clause. In those circuits, the fact that a transaction was finalized in another State is immaterial for Commerce Clause purposes so long as the measure survives *Pike*[12] balancing.

Thus, in *Aldens, Inc. v. Packel*, 524 F.2d 38 (3rd Cir. 1975), the court upheld against a Commerce Clause challenge a Pennsylvania statute that capped

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[12] *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970).

interest rates for mail order transactions. Aldens, a mail order company, solicited orders from all States, but had no employees or tangible property in Pennsylvania. *Id.* at 41. The orders were filled from outside Pennsylvania. *Id.* The credit agreements provided for the retention of a purchase money security interest in the merchandise, but Aldens did not file a security interest document. *Id.* The Third Circuit held that applying Pennsylvania's interest cap to the contract did not violate the Commerce Clause. *Id.* at 45-50. Balancing Pennsylvania's interest in protecting its consumers with the cost the measure imposed on interstate commerce, the court held that the measure was a valid exercise of state power. *Id.* at 50.

Likewise, the Tenth Circuit in *Aldens, Inc. v. Ryan*, 571 F.2d 1159 (10th Cir. 1978), upheld against a Commerce Clause challenge an Oklahoma law governing mail order contracts between an Illinois company and Oklahoma residents. *Id.* at 1161-62. The court concluded that a State could enact statutes "which affect commerce unless the burden so imposed greatly exceeds the extent of the local benefits" and held that the statute satisfied this test. *Id.* at 1162.

The reasoning in the Tenth Circuit's more recent decision in *Quik Payday, Inc. v. Stork*, 549 F.3d 1302 (10th Cir. 2008), *cert. denied*, 129 S. Ct. 2062 (2009), also cannot be squared with the decision below. In addressing the scope of the extraterritoriality principle, the court reasoned that a loan transaction does not occur "wholly" outside of Kansas when a loan

disbursement is made to a bank located in Kansas, even if the Kansas resident is out of state at the time he applies for a loan from a lender that is also located out of state. *Id.* at 1308. The Tenth Circuit recognized that a "transaction" contains several component parts and a State does not violate the extraterritoriality principle simply because a resident and a lender sign the contract outside of the territorial boundaries of a state. The court declined to apply the framework of *per se* invalidity and instead applied *Pike* balancing. *Id.* at 1309-13.

The contacts between Indiana and the transaction here are at least as great as the contacts involved in a mail order transaction. The loan company here, although physically located in a neighboring State, advertised in Indiana, payments on the loan are intended to be made from Indiana by an Indiana resident, the loan company can file a lien on the motor vehicle with the Indiana Bureau of Motor Vehicles, and any repossession of the vehicle would take place in Indiana. App. at 48a-53a. The lender undoubtedly knows when it is dealing with an Indiana resident.

The key for the Seventh Circuit was the fact that the contract is executed in another State. App. 17a. It is not clear why that fact is constitutionally dispositive. In the *Aldens* cases, the contract was not final until the mail order company received the order and agreed to fill it. Indeed, the Aldens "credit agreement recite[d] that it is an Illinois contract, and all orders are accepted in Illinois." *Aldens*, 571 F.2d at 1161. In short, in the Third and Tenth Circuits a

State may regulate a contract even if it is reached or finalized in one State, provided the contract is to be performed at least in significant part in that state. In contrast, in the Seventh Circuit, a State has no authority to regulate a contract that is finalized in another State, even if it will be performed in large part in the regulating State. The Court should grant certiorari to provide guidance to state legislatures, administrative agencies and to the lower courts.

II. THE *PER SE* RULE OF INVALIDITY EMPLOYED BY THE SEVENTH CIRCUIT IS UNDULY RESTRICTIVE OF STATE AUTHORITY.

A. As a general proposition, the Constitution does not preclude a State from exercising its police power simply because some component of a transaction occurs beyond the borders of that State.

Upon declaring independence from the British Crown, the former colonies became sovereign entities, *Blatchford v. Native Vill. of Noatak*, 501 U.S. 775, 779 (1991), with the "Full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do." *Declaration of Independence* (capitalization original). Indeed, the Articles of Confederation confirmed that the States retained their "sovereignty, freedom, and independence, which is not by this confederation expressly delegated to the

United States, in Congress assembled." *Articles of Confederation*, art. II.

It is settled law that a sovereign nation-state may regulate conduct that is intended to have, and does have, an effect within the territory of another sovereign state.[13] The United States has done so in various areas, including antitrust law.[14] To be sure, upon entering the Union, the States forfeited certain sovereign prerogatives. *See, e.g.*, U.S. Const. art. I, § 10. The text of the Constitution does not, however declare a categorical bar on all state laws that have some extraterritorial reach. Nor as a practical matter could it. "[I]t is inevitable that a state's law, whether statutory or common law, will have extraterritorial effects." *Instructional Sys. v. Computer Curriculum Corp.*, 35 F.3d 813, 825 (3rd Cir. 1994). This can be seen in various lines of decision by this Court.

For example, in the criminal context, the "detrimental effects" theory of jurisdiction allows a State to prosecute a person who commits an act within one State when the criminal consequences of

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[13] *See, e.g.*, Restatement (Second) of the Foreign Relations Law of the United States § 18 (1965).

[14] *See, e.g.*, *United States v. Aluminum Co. of America (Alcoa)*, 148 F.2d 416, 443-45 (2nd Cir. 1945) (Learned Hand, J.) (concluding that although Congress did not intend the Sherman Act to prohibit conduct having no effect in the United States, it did intend the Act to reach conduct having consequences within this country even where the parties concerned had no allegiance to the United States if the conduct is intended to and actually does have an effect upon United States imports or exports).

that act occur in another State. *See Strassheim v. Daily*, 221 U.S. 280, 285 (1911) ("Acts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a State in punishing the cause of the harm as if he had been present at the effect, if the State should succeed in getting him within its power."); *Skiriotes v. Florida*, 313 U.S. 69, 79 (1941) (upholding application of a Florida statute prohibiting sponge fishing to a Florida citizen's activities that occurred wholly outside of Florida's territorial waters). *See also Simpson v. Georgia*, 17 S.E. 984 (Ga. 1893) (Georgia had jurisdiction to try defendant who fired a shot from South Carolina into Georgia, intending to harm a person there); *Hageseth v. Superior Court*, 59 Cal. Rptr. 3d 385 (Cal. Ct. App. 2007) (California had jurisdiction to prosecute physician who practiced in Colorado but did not have a valid California medical license, when he prescribed a drug over the Internet to a Californian).

Similarly, the Due Process Clause does not forbid a State from asserting its regulatory authority over a transaction that has a connection to the regulating State. In *Watson v. Employers Liability Assurance Corp.*, 348 U.S. 66 (1954), the insurer argued that Louisiana had violated the extraterritoriality principle by hearing an action on an insurance contract that had been negotiated out-of-State. *Id.* at 70-71. The Court rejected the argument, noting that Louisiana may assert its regulatory authority over injuries that occur in the State. *Id.* at 72-73. In contrast, in *Home*

Insurance Co. v. Dick, 281 U.S. 397, 408 (1930), the Court held that Texas could not regulate an insurance policy issued in Mexico, by a Mexican insurer to a Mexican citizen. The Court noted, however, that the decision might have been different had activities relating to the contract taken place in Texas upon which the State could point to as a basis for regulation. *Id.* at 408 n.5.

At least in the criminal context and insofar as the Due Process Clause is concerned, so long as a sufficient connection exists, a State can assert its police power to protect its residents based on activities that occur outside the territory of the regulating State.

B. A far reaching extraterritoriality concept is not necessary to preserve the core protection to interstate commerce afforded by the dormant Commerce Clause.

Where the Commerce Clause limits a State's ability to exercise its police power, it is not because the Constitution limits a State's authority to protect its citizens to transactions that occur, in their entirety, within the territorial boundaries of a State. Rather, it must be because a particular exercise of a State's police power is harmful to interstate commerce.

The central purpose of the dormant Commerce Clause is to avoid "economic Balkanization," *Hughes v. Oklahoma*, 441 U.S. 322, 325 (1979), which is

manifested by state and local laws that discriminate against out-of-State entities or interstate commerce itself. *Kentucky Dep't of Revenue v. Davis*, 553 U.S. 328, 343 (2008). There is no argument here that Indiana's statute was designed to favor local economic interests or that it would trigger retaliatory measures by other States. Therefore, the statute does not infringe on the core purpose of the dormant Commerce Clause doctrine.

Although the dormant Commerce Clause imposes some limits on a State's ability to impose even facially neutral laws with an extraterritorial reach, the *per se* rule adopted by the Seventh Circuit is unduly broad and is not needed to protect the flow of interstate commerce. First, Congress can override state legislation through its Commerce power.[15] Second, a State cannot regulate conduct in another State that does not involve its own residents or conduct that has no effect within the State. A State can have no interest in such matters. *See Edgar*, 457 U.S. at 644 (a "State has no legitimate interest in protecting nonresident shareholders").

Third, *Pike* balancing restricts the ability of a State to impose burdens unjustified by a local interest. Among those burdens is the danger of inconsistent legislation. If a party is subject to "inconsistent legislation" from different States, a law's "practical effect" might lead to a Commerce

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[15] U.S. Const. art. I, § 8.

Clause violation. *See, e.g., Healy*, 491 U.S. at 336-37; *Brown-Forman*, 476 U.S. at 582-83; *Edgar*, 457 U.S. at 642-43. On the other hand, state laws which merely create additional, but not irreconcilable, obligations are not considered to be "inconsistent" for this purpose. *See Buzzard v. Roadrunner Trucking, Inc.*, 966 F.2d 777, 784 n.9 (3rd Cir. 1992).

The Due Process and the Full Faith and Credit Clauses impose further limitations on a State's ability to impose regulations with some extraterritorial effect. *See, e.g., Dick*, 281 U.S. at 408 (Texas could not regulate an insurance policy issued in Mexico, by a Mexican insurer to a Mexican citizen). *See also Allstate Ins. Co. v. Hague*, 449 U.S. 302, 308 n.10 (1981) (noting similarity of analysis under the Due Process Clause and the Full Faith and Credit Clause).

An overbroad prohibition on state laws having some extraterritorial effect will needlessly curb the proper exercise of a State's sovereign police power to protect its residents from abusive lending practices without any corresponding benefit to the flow of interstate commerce.

C. The Indiana statute easily survives *Pike* balancing.

Because the Indiana statute is "directed to legitimate local concerns, with effects upon interstate commerce that are only incidental," *Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978), the Indiana act

will be "upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits." *Pike,* 397 U.S. at 142. "A statute need not be perfectly tailored to survive *Pike* balancing, but it must be reasonably tailored: 'the extent of the burden that will be tolerated . . . depends on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.'" *Yamaha Motor Corp., U.S.A. v. Jim's Motorcycle, Inc.*, 401 F.3d 560, 569 (4th Cir. 2005) (quoting *Pike*, 397 U.S. at 142). The Indiana act survives *Pike* balancing for two reasons.

First, this Court should not "rigorously scrutinize economic legislation passed under the auspices of police power. There was a time when this Court presumed to make such binding judgments for society, under the guise of interpreting the Due Process Clause. We should not seek to reclaim that ground for judicial supremacy under the banner of the dormant Commerce Clause." *See United Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 347 (2007) (Roberts, C.J., joined by Souter, Ginsburg, & Breyer, JJ., announcing the judgment of the Court).

Second, the benefits to the citizens of Indiana clearly outweigh any burden on interstate commerce. The Indiana act serves an important and traditional sovereign interest—protecting consumers from abusive practices. The purpose of the Indiana law was to establish safeguards that would reduce the likelihood that Indiana residents would become

impoverished as a result of sharp lending practices. The burden of such regulation on title lenders is minimal. Those costs are avoided simply by refusing to enter into transactions with Indiana residents. The statute has no influence whatsoever on a title lender's business with residents from any other states. Moreover, the burdens are hardly unreasonable when considered in light of the protections that they afford to persons in difficult financial circumstances.

CONCLUSION

For the reasons stated above and in the Petition itself, the Petition for Certiorari should be **GRANTED**.

Respectfully submitted,

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